

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Robert D. Partain, #221068,)	
)	C.A. No. 3:09-3163-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Sean Karr, Probation Agent, and Judge)	
Macauley, Judge 10th Judicial Circuit,)	
)	
Defendants.)	

Plaintiff Robert D. Jackson is an inmate in the custody of the South Carolina Department of Corrections (“SCDC”) who is currently housed at Broad River Correctional Institution in Columbia, South Carolina. Plaintiff, proceeding *pro se*, filed the within action pursuant to 42 U.S.C. § 1983 on December 8, 2009 against Sean Karr and Judge Macauley of South Carolina’s Tenth Judicial Circuit, asserting that his constitutional rights have been violated in various respects. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. On January 4, 2010, Plaintiff was granted leave to proceed *in forma pauperis*. That same day, the Magistrate Judge issued a Report and Recommendation recommending that Plaintiff’s complaint be summarily dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1997).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination on any portions of the Report and Recommendation to which a specific objection is made. *Id.* The court may accept, reject, or modify, in whole or in part, the recommendation made

by the Magistrate Judge. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

In his response to the Report and Recommendation, Plaintiff does not take issue with the Magistrate Judge’s recommendation, but instead concedes that the action should “be dropped.” Entry 7 at 1. The court has conducted a *de novo* review of the case and concludes that the Magistrate Judge has properly applied the applicable law. Therefore, Plaintiff’s claim is dismissed without prejudice and without issuance of service of process.

Also before the court are Plaintiff’s requests to return his filing fee made in his response to the Report and Recommendation and by motion filed on February 3, 2010 and February 17, 2010. Plaintiff indicates that he did not understand that he would be charged for the filing of this action. The court declines to grant this request. The Prison Litigation Reform Act permits prisoners to proceed without pre-paying court fees by proceeding *in forma pauperis*. See 28 U.S.C. § 1915(a), (b). However, a prisoner is “to pay the full amount of the filing fee” as funds are available. *Id.* By filing this action, Plaintiff incurred a debt to the United States of America in the amount of \$350. Because Plaintiff had funds available in his prison account, these funds were applied towards Plaintiff’s debt. Title 28, United States Code, Section 1915 does not permit a refund of a filing fee. See *Golden v. Kaiser*, 1 F. App’x 841, 842 n.1 (10th Cir. 1994) (no authority to refund filing fee after district court denies *in forma pauperis* status); see also *Goins v. Decaro*, 241 F.3d 260, 261 (2d Cir. 2001) (the Prison Litigation Reform Act makes no provision for return of fees partially paid). As a result, this court has no authority to return payments made towards Plaintiff’s filing fee.

CONCLUSION

Based upon the foregoing, the court adopts the Report and Recommendation and incorporates it herein by reference. Plaintiff's complaint is summarily dismissed without prejudice and without issuance and service of process. Plaintiff's requests for the return of his filing fee are denied.

IT IS SO ORDERED.

s/ Margaret B. Seymour
The Honorable Margaret B. Seymour
United States District Judge

June 11, 2010
Columbia, South Carolina